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OFFICE OF PETITIONS

In re Application of
Peter Rudloff
Application No. 09/403,174
Filed: October 18, 1999
Attorney Docket No. 016072-000600US

DECISION ON PETITION

This is a decision on the petition filed February 16, 2006, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment and a petition under 37 CFR 1.137(b) to revive the above-identified application.

On September 2, 2004, the Office mailed a Notification of Non-Compliance with 37 CFR 1.192(c), stating that the appeal brief filed on June 18, 2004, was defective for failure to comply with 37 CFR 1.192(c)(5). The Notification indicated that the brief did not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters. Furthermore, to avoid dismissal of the appeal, petitioner was required to file a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of three time periods: (1) one month or thirty days from the mailing date of the Notification; (2) two months from the date of the notice of appeal; or (3) within the period for reply to the action from which the appeal was taken. Extensions of these time periods were permitted under 37 CFR 1.136. On September 20, 2005, the Office mailed a Notice of Abandonment.

In the petition, petitioner requested that the Office withdraw the Notification of Non-Compliance because 37 CFR 1.192(c)(5), requiring a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters, was not in effect when the Appeal Brief was filed. Therefore, petitioner asserted that the Appeal Brief was properly filed and reproduced the Appeal Brief for the examiner's convenience.

The Office notes that § 1.192(c)(5) as it reads above was in effect at the time petitioner filed the Appeal Brief. See *MPEP Eighth Edition, Revision 2 (May 2004)*. The Notification of Non-Compliance with 37 CFR 1.192(c) was correct and properly mailed, and therefore, will not be withdrawn.

The petition under 37 CFR 1.181 is dismissed.

As to the petition to revive, the provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed.
- (2) The petition fee as set forth in 37 CFR 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The present petition does not satisfy requirement (1) above.

The record reveals that petitioner did not submit an appropriate response to the outstanding Office communication previously or with the present petition. Accordingly, the petition under 37 CFR 1.137(b) is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request must include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)," as well as an appropriate reply. No additional petition fee is necessary.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
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 401 Dulany Street
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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

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